



**UNITED STATES DEPARTMENT OF JUSTICE
Drug Enforcement Administration**

**Lawrence E. Stewart
Decision and Order**

On June 12, 2017, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause to Lawrence E. Stewart, M.D. (hereinafter, Respondent), of Summit, Mississippi. Order to Show Cause (hereinafter, OSC), at 1. The OSC proposed the denial of Respondent's application for a DEA Certificate of Registration because Respondent had committed acts that rendered his registration with DEA inconsistent with the public interest. *Id.* (citing 21 U.S.C. §§ 823(f) and 824(a)(2), (4)).

On July 27, 2017, Respondent submitted a timely written statement in response to the OSC waiving his right to a hearing. Request for Final Agency Action Exhibit (hereinafter, RFAAX) 3. In lieu of a hearing, Respondent submitted a Statement of Position on the Facts and Law (hereinafter, Statement) regarding the matters alleged in the OSC. *Id.*

The Government filed a Request for Final Agency Action (hereinafter, RFAA) on March 25, 2019. In its RFAA, the Government stated that Respondent is no longer licensed to practice medicine in Mississippi and provided documentation from the Mississippi State Board of Medical Licensure to support this claim. RFAA at 2; *see* RFAAX 7, Appendices A-C. The Government then requested that I deny Respondent's application for a DEA registration on the grounds that Respondent lacks authority to handle controlled substances in the State of Mississippi, the state where he seeks a DEA registration. RFAA at 5-6. The Government had not alleged that Respondent lacked state authority in the OSC. OSC at 2.

The Government is not required to issue an amended OSC to notice an allegation of a registrant's lack of state authority that arises during the pendency of a proceeding regarding a DEA registration. *Hatem M. Ataya, M.D.*, 81 Fed. Reg. 8221, 8244 (2016). Previous Agency

decisions have stated that because the possession of state authority is a prerequisite for obtaining and maintaining a registration, the issue of state authority can be raised at any stage of a proceeding, even *sua sponte* by the Administrator. *See Ataya*, 81 Fed. Reg. at 8244; *Joe M. Morgan, D.O.*, 78 Fed. Reg. 61,961, 61,973-74 (2013). I issued an Order on February 3, 2021, providing Respondent with notice of the Government's allegation that he currently lacks state authority to handle controlled substances in the State of Mississippi, and providing him with the opportunity to show the contrary. Respondent submitted a response to the Order on February 4, 2021, stating "I am not currently licensed to practice medicine."

I make the following findings of fact based on the record before me.

FINDINGS OF FACT

Respondent's Application for a DEA Registration

On January 25, 2017, Respondent filed an application (Application Control No. H17068500C) for a DEA Certificate of Registration as a practitioner in schedules II-V, with a proposed registered location at 1050 Daisy Lane, Summit, Mississippi 39666. RFAAX 1.

The Status of Respondent's State License

At the time Respondent applied for a DEA registration, he held a Mississippi medical license. RFAAX 7, Appendix A (Mississippi State Board of Medical Licensure Determination and Order). On May 18, 2017, the Mississippi State Board of Medical Licensure (hereinafter, the Board) issued a Decision and Order suspending Respondent's medical license. *Id.* The Board suspended Respondent's license after finding him guilty of 1) having been convicted of violating a federal law regulating the distribution of a narcotic drug; 2) prescribing a drug having addiction forming or addiction sustaining liability otherwise than in the course of legitimate professional practice; and 3) unprofessional conduct. *Id.* The Decision and Order stayed Respondent's suspension contingent on his completion of certain requirements, including compliance with the Mississippi Professional Health Program (hereinafter, MPHP). *Id.* at 3-4.

On March 19, 2018, the Board found that Respondent had failed to comply with an MPHP requirement to abstain from alcohol. RFAAX 7, Appendix B (Board Order of Prohibition). The Board, therefore, issued an Order of Prohibition prohibiting Respondent from practicing medicine in Mississippi “until such time as the Board and MPHP determines that [Respondent] is able to return to the practice of medicine.” *Id.*

According to Mississippi’s online records, of which I take official notice, Respondent’s license is expired.¹ Mississippi State Board of Medical Licensure, Licensee Lookup, <https://gateway.msbml.ms.gov/verification/search.aspx> (last visited date of signature of this Order). Respondent also confirmed in response to my Order that, as of February 4, 2021, he was not licensed to practice medicine.

Accordingly, I find that Registrant currently is not licensed to engage in the practice of medicine in Mississippi, the State in which Registrant is registered with the DEA.

DISCUSSION

Pursuant to 21 U.S.C. § 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA) “upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. *See, e.g., James L. Hooper,*

¹ Under the Administrative Procedure Act, an agency “may take official notice of facts at any stage in a proceeding – even in the final decision.” United States Department of Justice, Attorney General’s Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. § 556(e), “[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.” Accordingly, Registrant may dispute my finding by filing a properly supported motion for reconsideration of finding of fact within fifteen calendar days of the date of this Order. Any such motion shall be filed with the Office of the Administrator and a copy shall be served on the Government. In the event Registrant files a motion, the Government shall have fifteen calendar days to file a response. Any such motion and response may be filed and served by e-mail (dea.addo.attorneys@dea.usdoj.gov).

M.D., 76 Fed. Reg. 71,371 (2011), *pet. for rev. denied*, 481 F. App'x 826 (4th Cir. 2012);

Frederick Marsh Blanton, M.D., 43 Fed. Reg. 27,616, 27,617 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term “practitioner” to mean “a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. § 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. § 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner’s registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper*, 76 Fed. Reg. at 71,371-72; *Sheran Arden Yeates, M.D.*, 71 Fed. Reg. 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 Fed. Reg. 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 Fed. Reg. 11,919, 11,920 (1988); *Frederick Marsh Blanton*, 43 Fed. Reg. at 27,617.

According to Mississippi statute, “except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in Schedule II . . . may be dispensed without the written valid prescription of a practitioner,” and “except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in Schedule III or IV . . . shall not be dispensed without a written or oral valid prescription of a practitioner.” Miss. Code Ann. § 41-29-137(a)(1) and (b) (West 2020). Further, “a practitioner” is defined as “a physician, dentist, veterinarian, scientific investigator, optometrist . . . or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of

professional practice or research in this state.” Miss. Code Ann. § 41-29-105(y)(1) (West 2020). Mississippi regulations define a “physician” to be “any person licensed to practice medicine, osteopathic medicine or podiatric medicine in the state of Mississippi.” 30-2640 Miss. Code R. § 1.2(C). The regulations further state that “‘prescriptive authority’ means the legal authority of a professional licensed to practice in the state of Mississippi who prescribes controlled substances and is registered with the U.S. Drug Enforcement Administration in compliance with Title 21 C.F.R., Part 1301 Food and Drugs.” 30-2640 Miss. Code R. § 1.2(F).

Here, the undisputed evidence in the record is that Respondent currently lacks authority to practice medicine in Mississippi. As already discussed, a physician must be licensed to practice medicine in order to have prescriptive authority for a controlled substance in Mississippi. Thus, because Respondent lacks authority to practice medicine in Mississippi and, therefore, is not authorized to prescribe controlled substances in Mississippi, Respondent is not eligible to receive a DEA registration. Accordingly, I will order that Respondent’s application for a DEA registration be denied.

ORDER

Pursuant to 28 C.F.R. § 0.100(b) and the authority vested in me by 21 U.S.C. § 823(f), I hereby order that the pending application for a Certificate of Registration, Control Number H17068500C, submitted by Lawrence E. Stewart, M.D., is denied, as well as any other pending application of Lawrence E. Stewart for additional registration in Mississippi. This Order is effective **[insert Date Thirty Days From the Date of Publication in the Federal Register]**.

D. Christopher Evans,
Acting Administrator.